

whether it has been acquired by a company or business that is related to a company, within the meaning of § 159.61(b)(2)(ii)(A)(1) through (3), that opposed the antidumping or countervailing duty investigation that resulted in the order or finding under which the distribution is sought.

(c) *Review and correction of certification.* A certification that is submitted in response to a notice of distribution and received within 60 days after the date of publication of the notice in the FEDERAL REGISTER may be reviewed before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for current and prior qualifying expenditures, including the amount claimed for distribution, appear to be correct (see paragraph (b)(2) of this section). A certification that is found to be materially incorrect or incomplete will be returned to the domestic producer within 15 days after the close of the 60-day filing period. Within 10 days of the date that Customs returns a certification as being materially incorrect or incomplete, Customs must receive a corrected certification from the affected domestic producer. Customs will make every effort to assist companies to perfect their certifications and will not return claims for minor errors or omissions. However, it remains the sole responsibility of the domestic producer to ensure that the certification is correct, complete and satisfactory so as to demonstrate the entitlement of the domestic producer to the distribution requested. Failure to ensure that the certification is correct, complete and satisfactory as provided in this paragraph will result in the domestic producer not receiving a distribution.

(d) *Verification of certification; supporting records.* Certifications are subject to verification. Parties, therefore, are required to maintain the accounting records used in developing their claims, for a period of five years after the filing of the certification. The records supporting certifications must be those that are normally kept in the ordinary course of business (see § 163.1(a)(1) and (a)(2)(vi) of this chapter). Parties must be able to demonstrate that their records specifically

support each qualifying expenditure enumerated in a certification. In addition, the claimant must be able to support how qualifying expenditures are determined to be related to the production of the product covered by the order or finding.

(e) *Disclosure of information in certifications; acceptance by producer.* The name of the affected domestic producer, the total dollar amount claimed by that party on the certification, as well as the total dollar amount that Customs actually disburses to that company as an offset, will be available for disclosure to the public (see § 159.64(g)(1)). The submission of the certification will be construed as an understanding and acceptance on the part of the domestic producer that this information will be disclosed to the public. Alternatively, a statement in a certification that this information is proprietary and exempt from disclosure will result in Customs rejection of the certification.

#### § 159.64 Distribution of offset.

(a) *The creation of Special Accounts and Clearing Accounts—(1) Special Accounts.* As directed in the legislation (19 U.S.C. 1675c(e)), Customs will establish Special Accounts for each antidumping duty order or finding or countervailing duty order, into which funds will be transferred as set out in paragraph (b) of this section. All distributions to affected domestic producers will be made from the Special Accounts.

(2) *Clearing Accounts.* In order to properly manage and account for dumping and subsidy offsets, as well as any requisite refunds to importers, Customs will also establish Clearing Accounts. All estimated antidumping and countervailing duties received pursuant to an antidumping or countervailing order or finding in effect on January 1, 1999, or thereafter, will be deposited into a Clearing Account.

(b) *Distribution of assessed duties received from the Special Accounts; refunds resulting from reliquidation or court action; and overpayments to affected domestic producers—(1) Distribution of assessed duties received from the Special Accounts.* (i) No later than 60 days after the end of a fiscal year, Customs will distribute

the assessed duties transferred from the Clearing Accounts and received into the Special Accounts. The amount distributed shall be referred to as the dumping and subsidy offset;

(ii) Transfers from the Clearing Accounts to the Special Accounts will be made by Customs throughout the fiscal year. Transfers will occur between a Clearing Account and a Special Fund Account when an entry upon which antidumping or countervailing duties are owed is properly liquidated pursuant to an order, finding or receipt of liquidation instructions;

(iii) The amount transferred at liquidation to the Special Account will be dependent upon the amount actually collected on the entry and in the Clearing Account. Following liquidation, additional transfers will be made on the liquidated entry to the corresponding Special Account, as additional antidumping or countervailing duties are collected.

(2) *Refunds resulting from reliquidation or court action.* If any of the underlying entries composing a prior distribution should reliquidate for a refund, such refund will be recovered from the corresponding Special Account. Similarly, refunds to importers resulting from any court action involving those entries will also be recovered from the corresponding Special Account. Refunds to importers will not be delayed pending the recovery of overpayments from domestic producers as set out in paragraph (b)(3) of this section.

(3) *Overpayments to affected domestic producers.* Overpayments to affected domestic producers resulting from subsequent reliquidations and/or court actions and determined by Customs to be not otherwise recoverable from the corresponding Special Account as set out in paragraph (b)(2) of this section will be collected from the affected domestic producers. The amount of each affected domestic producer's bill will be directly proportional to the total dumping and subsidy offset amounts that the affected domestic producer previously received under the related Special Account. All available collection methods will be used by Customs to collect outstanding bills, including but not limited to, administrative offset. Interest at the same rate set out at

§24.3a(c) of this chapter will begin to accrue on unpaid bills 30 days from the bill date.

(c) *Payment of certified claims.* (1) If the total amount of the certified net claims filed by affected domestic producers does not exceed the amount of the offset available for distribution in the corresponding Special Account, the certified net claim for each affected domestic producer will be paid in full.

(2) If the certified net claims exceed the dumping and subsidy offset amount available in the corresponding Special Account, such offset will be made on a pro rata basis based on each affected domestic producer's total certified claim.

(3) In any case where the distribution is not for the entire certified qualifying expenditure submitted by an affected domestic producer, and if the affected domestic producer believes that the reduction was the result of clerical error or mistake by Customs, it must file a request for reconsideration within 30 calendar days to the address given in the notification. After considering the matter, the Customs Service will notify the party requesting reconsideration of its decision. However, any adjustments will be made only from funds remaining in the account for that case in the current or future fiscal years, and will be paid prior to any future distributions.

(d) *Final distribution and termination of the Special Account.* (1) A Special Account will be terminated and a final distribution will occur when:

(i) The order or finding with respect to which the account was established has terminated; and

(ii) All entries relating to the order or finding are liquidated, all outstanding amounts collected or properly accounted for by Customs, all related protests, petitions, and court actions fully concluded, and all refunds due to importers on the underlying entries are paid in full.

(2) Once the requirements set out in paragraph (d)(1) of this section have been met, notice of a final distribution will be issued pursuant to §159.62.

(3) Amounts not timely claimed under the notice of final distribution will be permanently deposited into the General Fund of the Treasury.

(e) *Interest on Special Accounts and Clearing Accounts.* In accordance with Federal appropriations law, and Treasury guidelines on Special Accounts, funds in such accounts are not interest-bearing unless specified by Congress. Likewise, funds being held in Clearing Accounts are not interest-bearing unless specified by Congress. Therefore, no interest will accrue in these accounts. However, statutory interest charged on antidumping and countervailing duties at liquidation will be transferred to the Special Account, when collected from the importer.

(f) *Distribution final and conclusive.* Except as provided in paragraphs (b)(3) and (c)(3) of this section, any distribution made to an affected domestic producer under this section shall be final and conclusive on the affected domestic producer.

(g) *Annual report; disclosure of information.* Although it is not mandated in the law (19 U.S.C. 1675c), Customs will issue an annual report on the disbursements. This report will be available to the public via the Customs website. The annual report will address any initiatives that have been implemented to improve the liquidation and disbursement process. In addition, the annual report will include the information described in paragraphs (g)(1) and (g)(2) of this section.

(1) *Company-specific information.* The annual report will include the following information concerning those parties that have submitted certifications for a distribution of the offset with respect to each order or finding as identified by its case number:

- (i) The name of the claimant;
- (ii) The total dollar amount claimed by that party on its certification; and
- (iii) The total dollar amount disbursed to that company by Customs.

(2) *General information.* The annual report will include the following general information for each order or finding as identified by its case number:

- (i) The number of entries and dollar amounts in the clearing account at the beginning of each fiscal year;
- (ii) The number and amount of Customs re-liquidations during the fiscal year; and

(iii) The dollar amounts remaining uncollected from Customs bills issued during the fiscal year.

## PART 161—GENERAL ENFORCEMENT PROVISIONS

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AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1600, 1619, 1624.

Section 161.2 also issued under 12 U.S.C. 95a; 18 U.S.C. 545; 19 U.S.C. 1595(a); 22 U.S.C. 401, 1934, 2349aa8-9; 42 U.S.C. 1804, 1807; 50 U.S.C. 1641 *et seq.*, 1701 *et seq.*; 50 U.S.C. App. 1-44, 2411.

SOURCE: T.D. 72-211, 37 FR 16487, Aug. 15, 1972, unless otherwise noted.

### § 161.0 Scope.

This part provides general information concerning Customs enforcement of certain import and export laws administered by other federal agencies, the filing of offers in compromise of government claims, the eligibility of individuals for informant compensation, and the filing of claims for informant compensation.

[T.D. 98-22, 63 FR 11826, Mar. 11, 1998]

### Subpart A—General Provisions

#### § 161.2 Enforcement for other agencies.

(a) *Laws enforced by Customs Service for administering agencies.* Some of the laws enforced in whole or in part by the Customs Service for administering agencies are:

- (1) Importations and exportations of arms, ammunition, implements of war, helium gas, and other munitions of war are governed by laws administered by the Bureau of Alcohol, Tobacco and Firearms and Department of State;